(Testimony of Henry E. Berman.)

two signatures, and the extensions are not in my handwriting.

Q. The extensions are not in your handwriting?

A. No, sir.

Q. And by "the extensions" do you mean the figures which appear under the column "Amount"? Is that correct? A. Yes, that is correct.

Q. But the designation of the commodities, Mr. Berman, upon the general left-hand area of the document, and the designation of the quantity and price, are all of those in your handwriting?

A. They all are.

Q. Is the name of the addressee in your handwriting? A. It is.

Q. Is this document prepared in the usual course of business by you? A. It is.

Mr. Sullivan: I offer this document in evidence, your Honor, as Defendants' Exhibit next in order.

Mr. Pratt: I sugggest that you show it to me.

Mr. Sullivan: Why, I would be glad to. If you request I will do it on all occasions.

Mr. Pratt: I suggest that you do it on all occasions. I have no objection.

The Court: It may be admitted and marked.

(Defendants' Exhibit CJ for Identification was thereupon received in evidence.)

Mr. Sullivan: Q. Now, in how many copies was this document, which is Defendants' CJ in evidence, prepared?

A. Two, of which that is the carbon copy.

Q. And at the same time, namely, at the time

(Testimony of Henry E. Berman.)

that the delivery of this merchandise on any given occasion was going out, was there another document in addition to the invoice which I have shown you, which is U. S. Exhibit No. 65 in evidence, and in addition to this hand tag, which is Defendants' CJ in evidence, was there another set of documents usually prepared? A. In my handwriting?

Q. In your handwriting?

A. Yes, usually there was.

Q. What type of document was that?

A. It was a replica of that with the exception it was not the same form. It was on a different type of invoice pad.

Q. And what did you do with that particular document, namely, the third mentioned document?

A. That would also accompany the merchandise to the water front and be returned to me with various signatures.

Q. So that when the driver left on these sales to the War Shipping Administration from your department, Mr. Berman, to summarize the practice, how many different types of documents did he usually have? A. Three.

Q. And they were, to enumerate——

A. The type, in two parts, which you have in your hand, the duplicate and original of the blue copy, which is in my own handwriting, and a varying amount of typewritten invoices.

Q. Did you commonly refer to those as hand tags? What was the common name for them?

A. I did not.

(Testimony of Henry E. Bernay.)

Q. What did you call them?

A. That is an invoice, so far as I am concerned.

Q. A written invoice?

A. A written invoice.

Q. As distinguished from the typewritten invoice, is that correct? A. That is correct.

Q. What was the purpose of sending the written invoice, which is similar to Defendants' CJ in evidence, and also the blue copy, which was prepared at the same time?

A. When there was rationed goods involved it was necessary for us, in order to retrieve the points involved, to receive a custom inspector's signature, and for that purpose I used the other set of handwritten hand tags.

Q. And then when the other set of handwritten hand tags came back what was done with those, usually?

A. We had a [3225] girl in our employ who did nothing but take care of our ration account. I would turn that over to her, and from that information she was able to receive back from the OPA, in some manner with which I am not familiar, the points involved.

Q. The invoice which is similar to United States Exhibit No. 65 in evidence, the typewritten invoice, was that signed usually at the point of destination?

A. I would usually request a signed copy of that back, although it was not mandatory on the part of the shipping company for me to do so.

(Testimony of Henry E. Berman.)

Q. Now, how about the Defendants' CJ in evidence with respect to signature?

A. Definitely. That is our office copy.

Q. That is your permanent record?

A. That is our only record with a signature on it.

Q. The only record of the transaction with the signature on it? A. That is right.

Q. Do you in your regular course of business keep a copy of the printed invoice, the typewritten invoice? A. Not in all cases.

Q. I think you have told us that the signed copy of the blue invoice or the blue handwritten tag went ultimately to the OPA, did it?

A. Yes, that was the copy that we intended for that purpose. However, some drivers would fail to bring the correct copies back and leave the wrong copies at the dock, so I would get various types of signed copies back for that [3226] purpose.

Q. Did you ever have any trouble like that with Mr. Nystrom? A. Invariably.

Q. And what trouble did you have with him?

A. Well, with Mr. Nystrom on every delivery I would have to assemble my invoice and my hand tags together and explain carefully, "Oscar, now this is for the customer. This you bring back with the steward's signature. And this is for the customs inspector. If the customs inspector is not at the dock, be sure and leave a stamped self-addressed envelope," which we had printed for that express purpose there so we could get our

(Testimony of Henry E. Berman.)

customs back, and invariably he would not do one or the other of the things, or bring back the wrong copies.

Q. Now, I notice in connection with the shipment to the John Muir, Mr. Berman—I will let you read it—this shipment calls for some eggs; does it?

A. It calls for 48 cases.

Q. Of what kind of eggs?

A. Medium processed, Grade AA.

Q. At that time when you made this out and caused this load to be sent out were there inspected eggs on your floor? A. Yes, there were.

Q. Do you recall a shipment made to the Cape Pillar on or about April 25, 1944, in connection with your department?

A. Only because of what I have heard here in court.

Q. In other words, that was another of your many transactions, was it?

A. Apparently it was. [3227]

Q. I will show you United States Exhibit 56 in evidence, purporting to be a purchase order of Williams Dimond Company as agents for the South Atlantic Steamship Line as general agents pertaining to a shipment to the Cape Pillar and ask you if you can identify that purchase order?

A. It looks like a copy that I would have had from Williams Dimond. However, I believe, if my memory serves me correct, their copies that they sent to us were blue.

Q. But other than that it is generally in con-

(Testimony of Henry E. Berman.)

formity with the usual type of purchase order from that company?

A. It is precisely in conformity.

Q. Do you remember this particular physical document? A. No, I do not.

Q. I will show you United States Exhibit No. 57 in evidence, purporting to be an invoice of Nye & Nissen dated April 25, 1944, with relation to a shipment to the Cape Pillar, and ask you if you can identify that document?

A. It is typical of our invoices.

Q. Is that the invoice that would accompany the sale in accordance with your testimony in relation to a typewritten invoice?

A. That is one of them.

Q. I mean it is a copy of it, is that correct?

A. Yes, it is.

Q. Now, there would be, as you have testified, a hand tag in your writing in connection with this?

A. Yes, there must be.

Mr. Sullivan: Mr. Clerk, will you please mark this [3228] Defendants' Exhibit for identification next in order.

(The document was thereupon marked Defendants' Exhibit CK for Identification.)

Mr. Sullivan: Q. I will show you Defendants' CK for Identification, purporting to be a Nye & Nissen City Sale handwritten invoice bearing No. 15282, dated April 25, 1944, and ask you if you can identify that document?

A. Yes, this is in my handwriting.

(Testimony of Henry E. Berman.)

Q. Is that a document prepared in your usual and regular course of your business?

A. Yes, it is.

Q. Is this document entirely in your handwriting?

A. No, just the same particulars on that document as was on the previous one as in my handwriting.

Q. In other words, are the extensions indicated in the extreme right-hand column under the word "Amount" in your handwriting? A. No.

Q. With that exception, and with the exception of the acknowledgment of receipt in the lower corner, the longhand on this document is in your handwriting, is that right?

A. Entirely.

Q. Is this a part of the permanent records of your company, so far as you know?

A. Yes, it is.

Mr. Sullivan: I offer Defendants' CK for Identification in evidence, if the Court please.

The Court: It may be admitted and marked.

(Defendants' Exhibit CK for Identification was thereupon [3229] received in evidence.)

Mr. Sullivan: Q. I will hand you Defendants' CK in evidence, Mr. Berman, and ask you if that invoice shows any eggs on it as having been delivered?

A. It shows 45 cases of Medium Grade AA Processed.

Q. And on that date, did you have eggs duly

(Testimony of Henry E. Berman.)

and properly stamped by the United States Department of Agriculture on your floor?

A. Yes, they were.

Q. I wanted to go back just for a short time, Mr. Berman, to the steamship John Muir. Mr. Nystrom testified in this court that on the steamship John Muir you sent him to Mr. Goddard for some eggs. Now, to the best of your recollection, did that happen?

A. No, that would not be the usual procedure.

Q. What happened on that occasion?

A. Well, I would tell Oscar to go and get the specified amount of stamped Mediums from the floor. He was conversant with the plant and knew where everything was. It would be easy for him to go and get the merchandise.

Q. Mr. Nystrom testified that on this particular shipment, which called for 48 cases of eggs, that you directed him to go to Mr. Goddard and get 38 cases and then you told him to go and get 10 unstamped cases and to mix them with the 38 cases. Did you do that? A. I did that at no time.

Q. Did you at any time during the preparation of that delivery [3230] agree with Mr. Goddard, who sits over there, that you would take some unstamped cases with him or from him or his department and mix them up with that load?

A. I did not.

Q. Now, Mr. Nystrom stated with reference to the preparation of the delivery on the Muir that you sent him to Mr. Goddard to get the cheese on

(Testimony of Henry E. Berman.)

that boat. I will ask you if that procedure was followed with respect to those shipments?

A. That procedure was very rarely followed.

Q. In other words, on the steamship John Muir —I will ask you if you will just read that, please— the type of cheese that was delivered at that time.

A. There were seven cases of 5-pound Processed American Cheese. That particular cheese was——

Q. Will you just read all of them first and then I will ask you the question, Mr. Berman. It might be easier.

A. Seven cases of 5-pound Processed American Cheese, a total of 210 pounds; two cases of Cheddar Cheese with a total of 160 pounds; one case of Monterey Jack Cheese with a total of 65 pounds; and one bag of grated cheese with a total of 10 pounds.

Q. How would Mr. Nystrom get the cheese for his load on this particular occasion? What practice was followed?

A. He would physically go to wherever the particular type of cheese was and bring them back to the truck and put them in the truck himself. [3231]

Q. I noticed that on the shipment for the John Muir it states "2 cases of Cheddar Cheese, 160 pounds." Would that item on this particular sale be illustrative of the practice you described to the Jury where you would take an average of the range of weights and instruct Mr. Nystrom to physically obtain the cheese?

(Testimony of Henry E. Berman.)

A. Yes, the weight used there would be indicative of that practice.

Q. In other words, with this invoice in mind here, is it your recollection as to what the range of weight would be during that time?

A. Very definitely.

Q. And what is your recollection as to what it would be?

A. From 75 to 84 or 85 pounds.

Q. Mr. Nystrom testified about the steamship Cape Pillar, on which I have shown your some documents, and he stated in court that you instructed him to go to Mr. Goddard and get thirty-five cases of eggs, and then you instructed him to take ten cases of eggs which had been on the steamship Josiah Royce, and you with great definiteness showed him how to mix the cases on the truck, his testimony being, "Now, you put one here, and now do this—" this is in substance—"and now put one on these." Did that occur, Mr. Berman?

A. No, it did not.

Q. In other words, when the Cape Pillar order was filled, how would you instruct Mr. Nystrom as to filling the order with respect to the cases of eggs?

A. Regarding how many [3232] cases were involved, I would instruct Mr. Nystrom to get that many cases of stamped eggs and put them on his truck. From then on he would be on his own, and I would rarely come back to where he was working until he had finished the load, or if anything else had to go along with that load.

(Testimony of Henry E. Berman.)

The Court: The jurors may be excused. We will recess for a few minutes.

(Recess.) [3232-a]

The Court: Waive the roll call, stipulating and agreeing the jurors are in the box? I understand you got a message from your home.

Juror Jennie R. Steffen: Yes.

The Court: What was that message?

The Juror: My boy has the measles.

The Court: Your boy has what? How old is your boy?

The Juror: A. Thirteen and a half.

The Court: Q. How was he when you left home this morning?

The Juror: Well, he was sick. We were waiting for the doctor, so the doctor just left.

The Court: Well, gentlemen, under the circumstances I would take it there is nothing to do but excuse the mother of this youngster, unless you gentlemen have some objection.

Mr. Pratt: I did not understand your Honor.

The Court: Read the record, Mr. Reporter.

(The record was read by the reporter.)

Mr. Faulkner: Your Honor, I was going to suggest——

The Juror: I have somebody home with him.

The Court: Will you go home tonight? Well, I don't want——

The Juror: I would have to.

The Court: I am not familiar with measles.

(Testimony of Henry E. Berman.)

Mr. Faulkner: Your Honor, if the Juror wants to be [3233] excused and feels she should be——

The Court: I don't want you to be burdened by anything else in relation to your problems, so that if you feel you want to be excused and it is agreeable to both sides I will excuse you.

Mr. Faulkner: I don't think the quarantine laws —I don't think there is any problem if the lady wants to be excused.

The Court: It is a matter entirely for you as a mother what you wish to do under the circumstances.

The Juror: Well, I would like to be home with him but still I do have somebody there. Of course, he is big enough——

Mr. Faulkner: Suppose we see tomorrow, your Honor, what the condition is.

The Court: If you feel it is a burden you can call it to the attention of the Court and if you wish to be excused, under the circumstances I will consider it, or I will excuse you now if you wish.

The Juror: Well, if it would be all right I could wait until noon and call the doctor and determine what to do.

The Court: Very well. We will proceed.

Mr. Sullivan: Q. Mr. Berman, do you recall a shipment to the steamship Josiah Royce from City Sales at Nye & Nissen on April 25, 1944?

A. Yes, that is one of the ships that I have an independent recollection of. [3234].

Q. You recall that one?

A. Very well.

(Testimony of Henry E. Berman.)

Q. I will show you U. S. Exhibit 61 in evidence purporting to be a typewritten invoice dated April 25, 1944, with relation to that ship and ask you if you recognize that?

A. It looks like one of the invoices.

Q. I will show you U. S. Exhibit 60 in evidence, purporting to be a handwritten invoice of Nye & Nissen, City Sales, on that transaction, and ask you if you recognize that?

A. Yes, this is the original of the two yellow copies that I always made in connection with these or any other deliveries in my department.

Q. In other words, here is an instance in court where the Government has the original in the evidence already?

A. In all instances, this is the copy that was supposed to have been left with whoever received the merchandise.

Q. That is all in your handwriting?

A. All with exception of showing the receipt of the merchandise.

Q. How about the extensions?

A. There are no extensions here. The extensions were not put on that until after they had gone upstairs to be posted.

Q. Mr. Nystrom testified in this court, Mr. Berman, that with respect to the preparation by him of the shipment on the Royce you told him to go and get 20 cases of butter from Mr. Goddard on the time of delivery. Could you have followed that practice at that time?

(Testimony of Henry E. Berman.)

A. No. It was more than likely that [3235] the latter would have been on the floor in a somewhat larger quantity and I might have told him to go over and get 20 boxes of butter from that particular floor.

Q. Mr. Nystrom testified with respect to this shipment that you told him to go and get 50 cases of processed eggs, or of stamped eggs and then subsequently you told him to go and see Ruby about ten additional cases which were unstamped but marked with the letter "P" on them. Did you ever give any such instructions in connection with this shipment to Mr. Nystrom?

A. No, I did not.

Q. What was your practice at that time with respect to getting eggs for a ship like the Josiah Royce?

A. I would no doubt have told Mr. Nystrom to go get 60 cases of stamped Mediums for that particular boat. However, Mr. Nystrom was hard of hearing and did not always hear what you said.

Q. Did he have any trouble with the exchange of eggs on this particular order?

A. We had a lot of trouble.

Q. The question was did he have any trouble?

A. Absolutely, he did.

Q. He testified in court here to a certain set of transactions of which you told him to take 60 cases of eggs back to the Josiah Royce after a transaction in which he had delivered an original 60 and somebody at the dock had set ten cases aside because

(Testimony of Henry E. Berman.)

they were unstamped. Do you remember anything about that transaction?

A. The transaction, as far as I can [3236] remember—may I explain it?

Q. Yes, explain it in your own words and in detail.

A. Prior to Mr. Nystrom's return from this delivery I had a call apparently, or, rather, purportedly, from the ship's steward on the Josiah Royce saying that he had found ten cases of unstamped eggs among the sixty that were delivered to the boat and asked if we would immediately exchange those ten cases of eggs as they were loading the stores on that boat at that very time. I told him that we would and we would do so immediately. So when Mr. Nystrom came back I already knew that they had found ten cases of eggs unstamped at the Josiah Royce. I believe Mr. Nystrom started to tell me what had happened over there and I told him that "I know all about it, I received a phone call. Get ten cases of stamped eggs and make sure they are stamped and take them over to that boat and bring the other ten cases back."

Q. What did he do?

A. What he actually did, I don't know.

Q. What happened?

A. What happened was that Mr. Nystrom left and before I knew it, or at some later time, he was back and come over to me and said, "I've got 60 cases of eggs back." I said, "How could you have 60 cases of eggs? You were only going to exchange

(Testimony of Henry K. Berman.)

10 case." He said, "Well, I took over 60 cases of eggs, but all I could see on the dock was ten." Apparently they loaded the other 50 cases of eggs. "So all I did was load 10 cases out of the 60 that I had and I have 50 [3237] out of that load plus the ten cases that were on the dock." Well, I will admit I lost my temper with him at that time and asked him what he was trying to do riding eggs all over the country for no good reason whatsoever, and Mr. Nystrom was never very communicative, all he did was shrug his shoulders. I said, "Well, back your truck in and take off the whole load."

Q. Did you send him back with any eggs?

A. No, I don't think Mr. Nystrom went back to that boat again.

Q. Was there a further exchange on that boat that day, do you remember?

A. Yes. Later that day the purchasing agent of the General Steamship Company, who were acting for, I think it was the Isbrandtsen Steamship Company, called and asked if we would not exchange the 60 cases of Mediums on that boat for Large eggs as the ship's steward was prejudiced against the ones, or what he termed Small eggs. I explained to Mr. Hammond, I believe it was, that Mediums are not Small eggs, they may appear to be small to him if he is used to looking at Large eggs, but we would gladly comply with his request regardless of the inconveniece it would be for us.

Q. Did you? A. Yes, we did.

(Testimony of Henry E. Berman.)

Q. Do you recall a shipment made to the Cape Charles? A. Not offhand.

Q. This was on or about April 29, 1944?

A. I have heard the testimony regarding that, yes.

Q. This was one of the many transactions?

A. Yes. [3238]

Q. I show you U. S. Exhibit 94 in evidence and ask you if you recognize that document?

A. It looks like the selfsame document that accompanied the delivery.

Q. Just to go back for a moment to the Josiah Royce, I understand your testimony to be that you did replace, or Mr. Nystrom did bring back 10 cases that were unstamped and that had been down to the dock? A. That is correct.

Q. Have I got that clearly? A. Yes.

Q. Do you know what became of them after they were brought back?

A. I told him to unload the whole load.

Q. Did you tell him at any time to take those 10 cases and put them on another ship, the ten unstamped cases?

A. No, I am sure I did not.

Q. Did you ever at any time tell him to take the ten cases that were unstamped cases from the Josiah Royce and to mix them in with another load?

A. No. The natural thing if there were eggs as they were coming off the boat, or off the truck, would be either Mr. Nystrom or somebody else would truck them away so they wouldn't be in the

(Testimony of Henry E. Berman.)

way, otherwise they would be blocking the loading platform.

Q. Was that your answer? A. Yes.

Q. You have identified U. S. Exhibit 94 in evidence here which pertains to the Cape Charles. Mr. Berman, I will show you a Nye & Nissen handwritten invoice, Nye & Nissen, City Sales, dated April 29, 1944. I will show you rather, a photostat of [3239] what I have described pertaining to a shipment upon that date to the steamship Cape Charles, and I will ask you if you recognize the document of which that is a photostat?

A. Yes, I do.

Q. Is that document in your handwriting?

A. With the usual exceptions, it is.

Q. That is the exception as to the extensions?

A. And the signature for the receipt of the merchandise.

Q. Was that document prepared in the usual course of business, the document of which that is a photostat? A. Yes.

Q. Is that part of the permanent records of your company? A. It is.

Q. That is the document of which that is a photostat? A. It should be.

Mr. Sullivan: Mr. Pratt, it escapes my attention as to what became of the original document but that is a photostat of it.

Mr. Faulkner: If you make a question as to the photostat——

Mr. Pratt: I make no question.

(Testimony of Henry E. Berman.)

Mr. Faulkner: We had the invoices photostated about the five particular instances mentioned in the indictment, but under the other invoices, we had to have the originals and we undoubtedly have the originals——

Mr. Pratt: I make no question. [3240]

Mr. Faulkner: You may have a counterpart of that in your file because it has the signature of somebody from the shipping company.

Mr. Pratt: Well, we would not by any possibility have one that had the signature.

Mr. Faulkner: You may have.

Mr. Pratt: Well, I could be mistaken. Anyway, we don't question it.

Mr. Sullivan: I offer this in evidence as Defendants' Exhibit next in order.

The Court: Admtited and marked.

(The document was thereupon received in evidence and marked Defendants' Exhibit CL.)

Mr. Sullivan: Mr. Nystrom testified in this court, Mr. Berman, with respect to the shipment which is covered here to the Cape Charles and which is described in this Defendants' Exhibit CL in evidence. He testified that you directed him to get 36 cases of eggs from Mr. Goddard, to see Mr. Goddard, as he put it, about 36 cases of eggs. What was your practice at that time with respect to his getting the cases of eggs?

A. We always had a large stockpile of eggs available for War Shipping Administration orders. My practice at that time was to instruct any driver

(Testimony of Henry E. Berman.)

who was working under my jurisdiction to go to that particular pile and get the specified amount called for in a particular delivery. [3241]

Q. In other words, your testimony is substantially the same as you have given it on prior ships, to save time, is that correct? A. Yes, it is.

Q. Mr. Nystrom stated in court that you direct him to see Mr. Goddard about getting three cases of Cheddar Cheese which appear on this invoice as being invoiced at 240 pounds. Did he do that on that occasions? I will let you look at it.

A. That would not be the practice.

Q. What was the practice when this invoice was filled out?

A. It would be the practice to tell the driver filling the order to go over and get three cases of Cheddar Trips. Well, perhaps they came to 240 pounds. Very apparently I had a hand tag made up later what the man physically takes to the truck itself, the cheese.

Q. Under your existing practice who would have taken that cheese?

A. Whoever was making the delivery.

Q. Mr. Berman, I will let you look at this exhibit again, Defendants CL in evidence, and call your attention to the invoice of the cheese. What is that invoiced at?

A. Three cases of Cheddar Cheese invoiced at the weight of 240 pounds.

Q. Mr. Berman, Mr. Johnson testified in this courtroom that he saw three boxes of Cheddar

(Testimony of Henry E. Berman.)

cheese on this Cape Charles and that he weighed them and it came to a total weight of 153 pounds and he knew the tare was four pounds and he subtracted [3242] that and got 149 pounds and he testified that there was a shortage of 91 pounds. Have you the explanation from having heard the testimony in court for that particular difference in weight between what Mr. Johnson said he saw and what you told Mr. Nystrom to do?

A. Yes. The testimony is perfectly conclusive as to what happened in that particular invoice.

Q. What happened?

A. Mr. Johnson's testimony is that on this boat he had an invoice to match and looking at the invoice it called for three cases of Cheddar Trips and he weighed three cases of cheese.

Mr. Pratt: This is entirely argumentative. I object to it.

Mr. Sullivan: I am going to have the witness explain the——

The Court: Read the question and the answer.

(The record was read.)

The Court: The answer may go out. Reframe the question.

Mr. Sullivan: Q. Mr. Johnson testified in this court room, Mr. Berman, that he weighed three cases of Cheddar Twins on the SS. Cape Charles when he went aboard the SS. Cape Charles. I will ask this question: If the weight at the time Mr. Johnson weighed it, the net weight was 149 pounds for three cases was properly reflected; was that the

(Testimony of Henry E. Berman.)

average net weight for three cases of Cheddar Twins?

A. Yes, it could very well [3243] be.

Q. From your knowledge of the business and knowledge of the way cheese was packed, is it not a fact, Mr. Berman, that the three cases that were delivered were Twins instead of Trips.

Mr. Pratt: I object to that as argumentative.

The Court: Read the question.

(Question read.) [3243-a]

The Court: The objection will be sustained. Let it go out.

Mr. Sullivan: Q. Did you instruct Mr. Nystrom on this particular occasion to take three cases of Cheddar Twins to the SS. Cape Charles?

A. I couldn't have.

Q. At the time that the deliveries were going out for the steamship Cape Charles you packed Cheddar in trips, did you not?

A. Cheddar was packed in three different ways.

Q. Tell us about it.

A. They were packed three to a case, which I designated as trips or triplets; they were packed two to a case, which was designated as twins; and they were packed one to a case, which was designed as singles.

At this particular time I do not know whether we had any singles in our possession.

Q. At this particular time did you have twins?

A. That I know.

Q. Do you remember a shipment from your

(Testimony of Henry E. Berman.)

department of commodities to the SS. Henry White on May 1, 1944?

A. Not off hand.

Mr. Sullivan: I will show you this first, Mr. Pratt. It might make it easier. It is another case where we have a photostat on a substantive count.

Q. I will show you a document, being entitled, "Nye & Nissen, City Sales," bearing a stamp No. 16556, dated May 1, 1944, purporting to be a handwritten invoice addressed to the United States War Shipping Administration, De La Rama Steamship Company, and pertaining to a shipment of commodities to the [3244] SS. Henry White, and I will ask you, do you recognize that document?

A. This is one of the many documents I have made out.

Q. Do you find your handwriting in that document? A. Yes.

Q. What portion of that document do you find your handwriting on?

A. The body of the invoice, which is everything except the extension and the signature for receipt of the merchandse.

Q. Was that document prepared by you at the time that you have designated in your testimony here, namely, at the time of delivery?

A. Yes, it was.

Q. And was it prepared in the usual course of business? A. It was.

Q. Is this part of the usual records of your business?

(Testimony of Henry E. Berman.)

A. This particular one is not.

Q. But is the document of which that is a photostat a part of the records of your business?

A. Yes, it would be.

Q. When I have been referring in my testimony, in my questions to you, Mr. Berman, to a document, of course, I meant the document of which this particular paper is a photostat, is that correct?

A. Yes, sir.

Q. You recognize that as a photostat, don't you?

A. Yes, I do.

Mr. Sullivan: I offer this in evidence, if the Court please, and ask that it be duly marked Defendants' next in order.

The Court: It may be admitted and marked.

(The document was thereupon marked Defendants' Exhibit CM in evidence.)

Mr. Sullivan: Q. That is one of the handwritten invoices you have been testifying to, is that correct, Mr. Berman? A. That is.

Q. Along with that handwritten invoice would there in all probability have been another handwritten tag, so that we can keep this before the minds of the jury?

A. If there were any rationed merchandise on these it would have been. I didn't pay any particular heed to that.

Q. Would that be substantially the same with relation to setting out the goods, itemizing the goods, there?

A. Yes, it would be.

(Testimony of Henry E. Berman.)

Q. And it would be on a printed invoice tag, would it, the second document?

A. Yes, it would.

Q. After that document was prepared, as I understand your testimony, there would be an invoice, would there not, a typewritten invoice?

A. Yes, typewritten invoice would have accompanied the merchandise to the ship.

Q. I will show you United States Exhibit No. 53 in evidence and ask you if you recognize that document, which purportedly refers to a shipment to the Henry White at the date we have been talking about.

A. Yes, this is one of our invoices.

Q. And is it your recollection that this invoice would have been sent out on that delivery together with Defendants' Exhibit [3246] CM, or the document of which CM is a photostat?

A. Yes, very apparently that document accompanied the merchandise.

Q. Now, Mr. Nystrom testified in this court that you pointed out the cheese to him on this order. I will show you again Defendants' CM so that you can have it before you. I will ask you what cheese appears on that invoice?

A. 8 bundles of 5-pound Processed American cheese, 240 pounds, and 2 bags of grated cheese, 20 pounds.

Q. How does that 8 bundles of 5-pound Processed American cheese——

A. Well——

(Testimony of Henry E. Berman.)

Q. Just a minute, Mr. Berman. Will you explain to the jury how the eight bundles of 5-pound American adds up to 240? Just explain it.

A. 5-pound Processed American is the type of cheese that is wrapped in a 5-pound block encased in cellophane paper, and that, in itself, is contained in a cardboard carton, and six of those comprise what is commonly known as a bundle, which gives you a net of 30 pounds per bundle, and the invoice calls for eight bundles, which would make 240 pounds.

Q. What was your practice at that time with reference to giving Mr. Nystrom an order for cheese like that?

A. Well, the 5-pound Processed American was either piled on the floor immediately in front of my small icebox or inside the icebox, itself, all dependent on whether there was enough space in there, [3247] and all he would have to do is either on receipt of this hand tag, and being asked to fill it, go and get 8 cases of that Processed cheese off the floor or out of the icebox.

Q. I notice on here two bags of grated cheese. I will just let you look at that once more. What was your practice with respect to sending that type of cheese out?

A. That type of cheese was packed in bags, 10 pounds in a bag, paper bags, regular store bags.

Q. When you were sending them out what was your practice with respect to——

A. That was kept in the icebox and he would be

(Testimony of Henry E. Berman.)

told, or whoever was making the delivery would be told to go get two bags of grated cheese.

Q. Do you recall a shipment to the steamship Gilbert Hitchcock, Mr. Berman, on May 1st, also of 1944?

A. The name is familiar. I do not remember the incident, itself.

Mr. Sullivan: I will show Mr. Pratt the same type of handwritten invoice, a photostat of it, for the same reason we have indicated before to the court.

Q. I will show you a document purporting to be a photostat—and when I say a document, now, I refer to the subject of the photostat—purporting to be a document on Nye & Nissen City Sales printed invoice pad, and bearing a number 16559, dated May 1, 1944, addressed to the United States War Shipping Administration, Alaska Transportation Company, and purportedly pertaining to a shipment of certain commodities to the SS. [3248] Gilbert Hitchcock, and I will ask you if you recognize that document. A. Yes, I do.

Q. And is that document or any part of it in your handwriting?

A. Most of it is in my handwriting.

Q. What part of it is not in your handwriting?

A. The extensions and the receipt of the delivery.

Q. Is that document part of the permanent records of your company?

A. The original of this is, yes.

(Testimony of Henry E. Berman.)

Q. And was that document prepared by you in the usual and regular course of business?

A. Yes, it was.

Mr. Sullivan: The defendants offer this in evidence, if your Honor please.

The Court: It may be admitted and marked.

(The document was marked Defendants' Exhibit CN in evidence.)

Mr. Sullivan: Q. Mr. Berman, I will show you a document marked U. S. Exhibit No. 144 in evidence, purporting to be an invoice covering the sale that you have just described in your handwritten invoice, and ask you if you recognize it.

A. Yes, it is one of the invoices from our company.

Q. You would say that that had been prepared in the same manner that the previous invoice had been prepared, would you?

A. Yes.

Q. Was this invoice typewritten by someone in the upstairs office? Was that your procedure?

A. Yes, it was. [3249]

Q. With respect to this ship, Mr. Nystrom testified that on the occasion when the delivery was sent out, on or about May 1, 1944, that both you and Mr. Goddard furnished him with the eggs, and I will ask you if that was the practice that you followed at that time.

A. No, it was not the practice.

Q. Was the practice that you followed—to save time in questioning you on these transactions—was

(Testimony of Henry E. Berman.)

the practice that you followed at that time substantially the same practice that you followed with respect to eggs on the previous transactions you have talked about?

A. Our practice on eggs was always the same.

Q. Mr. Nystrom stated with respect to the shipment to this ship that at first he did not recall receiving the butter and cheese and then he testified that he did receive this butter from Mr. Goddard and the cheese from you. I will ask you this question: With respect to the butter, would your instruction have been the same as you previously indicated on past invoices where you told the driver to take butter out?

A. More likely than not.

Q. How about the cheese on this particular transaction, Mr. Berman? Will you please look at Defendants' CN in evidence and tell us what type of cheese you shipped out on that occasion?

A. Two cases of Cheddar Trips, 160 pounds, 5 bundles of Processed American cheese, 150 pounds, 1 bag of grated cheese, 10 pounds, and then there is something else. Oh, yes. [3250] 4 cartons of cream cheese, 20 pounds.

Q. With respect to the Cheddar trips, there, can you tell us from an examination of that invoice as to how the shipment was made up, and what practice you followed at that time?

A. Yes, he would have been, or whoever was making the delivery would have been instructed to

(Testimony of Henry E. Berman.)

go get two cases of Cheddar Trips, make sure they weigh 160 pounds between them.

Q. At the time that you gave that instruction on this ship was this hand tag or written invoice already written up for 160 pounds?

A. Yes, I am sure it was.

Q. And at that time did you assume that he would follow your instructions?

A. Naturally.

Q. Do you recall a shipment to the steamship Czechoslovakia Victory made on or about May 3, 1944, Mr. Berman?

A. I remember it because I could not spell the name.

Q. Aside from that, you remember there was some shipment to that boat, is that correct?

A. That is right. The name is very familiar to me.

Mr. Sullivan: Mr. Pratt, I will show you a photastat of a handwritten invoice pertaining to that vessel.

Q. I will show you a document purporting to be a photostat, and when I mention "document" hereafter I will mean the document of which this is the photostat—a document purporting to be a Nye & Nissen Corp. Sales invoice in handwriting, dated May 3, 1944, bearing No. 16591, addressed to the United [3251] States War Shipping Administration, American-Hawaiian, and purporting to cover a delivery to the steamship Czechoslovakia Victory,

(Testimony of Henry E. Berman.)

and I will ask if you can identify that document.

A. Yes, I can.

Q. Is that document, or any part of it, in your handwriting?

A. Most of it is in my handwriting.

Q. What part of the handwriting on that document is not yours?

A. Well, there is only one extension, and that is not mine, and the signature designated "Chief Steward" showing receipt of delivery, is not mine.

Q. With that exception, where there is handwriting, for instance designating in this case, "25" before the printed words "Medium, Loose" and designating a quantity, 750, and designating a price, 33½, all that handwriting is yours, is that correct?

A. Entirely.

Q. And so that we can get the record clear on these other invoices, wherever we have the quantity printed and there appears before the quantity an indication of the number of packages, that indication and handwriting would always be yours, is that correct? A. That is correct.

Q. The quantity, that is, the total pounds, dozens, or cases, that would be yours?

A. That is correct.

Q. And the price would be yours, is that correct? A. That is correct.

Q. But what you call the extensions, namely, the full amount of the charges, the number of packages multiplied by [3252] the price per unit or per package, that was not in your handwriting, is that correct?

(Testimony of Henry E. Berman.)

A. That was never in my handwriting.

Q. And this is part of the permanent records of your company, is it? A. Yes, it is.

Q. And this document was prepared by you in the regular and ordinary course of business?

A. It was.

Mr. Sullivan: I offer the document we have been talking about, your Honor, as Defendants' Exhibit next in order in evidence.

The Court: It may be admitted and marked.

(The document was marked Defendants' Exhibit CO in evidence.)

Mr. Sullivan: Q. Now, that document, then, found its way upstairs where a typewritten invoice was prepared? A. That is correct.

Q. Th is the practice you have told us here. That practice was constant, in other words?

A. That is right. In that particular instance there was probably no other set of hand tags, as I see there is only eggs involved in that, and therefore there would be no need to have a signature from the customs official for the points.

Q. So that we can get this clear again, in the instances where you had a rationed commodity you would have two different sets of hand tags prepared in your handwriting, that is, handwritten invoices, is that correct?

A. That is correct. [3253]

Q. And then you would have in addition to those the typewritten invoice?

A. That is correct.

(Testimony of Henry E. Berman.)

Q. In this particular case, from an examination of that invoice you feel pretty sure there was only one handwritten invoice prepared by you, is that correct?

A. That would have been the normal way I would have taken care of that transaction.

Q. I will show you United States Exhibit 151 in evidence, purporting to be a typewritten invoice of the sale to the American-Hawaiian Steamship Company, and I will ask you if you can identify that.

A. Yes, this looks like the original typewritten invoice.

Q. And that would have been sent out with the driver, would it, Mr. Berman, with your hand tag or handwritten invoice?

A. Yes, it would have.

The Court: We will take a recess until two o'clock this afternoon.

(A recess was taken until two o'clock p.m.)

Afternoon Session, March 21, 1946, 2:00 p.m.

The Court: Waive the roll call, stipulating and agreeing the jurors are all present. You may proceed.

The Clerk: Do you wish to inquire of Mrs. Steffen about her child, your Honor?

The Juror: Oh, your Honor, he is perfectly all right, and I phoned the Department of Public Health and there is no quarantine for adults.

HENRY E. BERMAN,

recalled;

Direct Examination (resumed)

Mr. Sullivan: Mr. Hippeli, may I have those exhibits?

Mr. Hippeli: Which do you want?

Mr. Sullivan: Well, I probably want all of them. I will hand back what I don't need immediately.

Q. Mr. Berman, I think I was asking you about the handwritten invoice on the Czechoslovakia Victory before lunch recess; is that correct?

A. I am not quite sure.

Mr. Sullivan: Have you the other set of exhibits, Mr. Hippeli, the Government exhibits?

Q. Mr. Berman, I don't know whether I showed you U. S. Exhibit No. 151 in evidence, but as a matter of precaution I will show it to you at this time and ask you if you remember or can identify that document as to——

A. Yes, this is the original [3255] of the invoice that accompanied the shipment.

Q. When you say the original of the invoice you mean—— A. The typewritten invoice.

Q. Was that invoice prepared with relation to the handwritten invoice?

A. Yes, it was made from a handwritten tag.

Q. Would there have been in this instance a blue tag, handwritten invoice, which you have called it?

A. Probably not.

Q. Probably not, you say?

A. That's right.

(Testimony of Henry Eugene Berman.)

Q. Incidentally, referring for just a moment to the steamship Cape Charles, have you a recollection as to just what practice was followed in that instance with respect to filling the handwritten invoice for the three case of Cheddar Trips that you see on the invoice?

A. Yes. The tag I made first and the cheese was assembled at the time it was ready to be loaded on the truck.

Q. Now, at that time was there on the floor of the plant also cheese in Cheddar Twins?

A. Yes, there was.

Q. On this "Cape Charles" order I am talking about.

A. Yes, there was.

Q. What is your recollection of the practice that was followed on that instance with reference to filling the order with respect to cheese?

A. I would designate the driver that was filling the order to go to the pile and get three cases of Cheddar Triplets to aggregate 240 pounds for that particular delivery. [3256]

Q. Do you recall a shipment made to the steamship Phillipa on or about May 3, 1944, out of your department, Mr. Berman?

A. No, I don't recall it off-hand.

Mr. Sullivan: Will you mark this paper as defendants' exhibit next in order for identification, Mr. Clerk?

(The document was marked Defendants' Exhibit CP for Identification.)

Mr. Sullivan: Q. Mr. Berman, I show you De-

(Testimony of Henry Eugene Berman.)

fendants' Exhibit CP for Identification, purporting to be an office copy of the Nye & Nissen, Inc. invoice dated May 3, 1944, bearing the number D2161, addressed to Matson Navigation Company —no, addressed to the United States of America, War Shipping Administration, Matson Navigation Company, and purporting to be an invoice with reference to the commodities for the steamship Phillipa, and I will ask you to look at that document. Have you examined that document.

A. Yes, I have.

Q. Is that in your handwriting?

A. No, it is not.

Q. Do you recognize in whose handwriting that is? A. Yes.

Q. Whose handwriting is that?

A. Mr. Goddard's.

Q. When you say "Mr. Goddard's"—I will withdraw that question.

Is there any handwriting on the document which is not Mr. Goddard's?

A. Yes, apparently the extensions were made through our regular procedure by someone in the office.

Q. The extensions are not Mr. Goddard's?

A. No, they are not. [3257]

Q. I will call your attention to a very lightly penciled signature on the lower right hand corner of the document; is that your handwriting, or Mr. Goddard's?

A. No, it is neither mine or Mr. Goddard's.

(Testimony of Henry Eugene Berman.)

Q. Did you have anything to do with the shipment to the Phillipa? A. No, I did not.

Q. On May 3, 1944? A. No, I did not.

Q. Was that handled through your department?

A. No. Matson Navigation is handled through Mr. Goddard's department.

Q. Mr. Nystrom testified in this court that you gave him instructions and you prepared the order for the Phillipa, and along with Mr. Goddard indicated the eggs that he was to put on the truck that went out with the order to the Phillipa; is that a true statement?

A. Could not have possibly been.

Q. Did you have anything to do with that transaction? A. No, sir.

Q. He said further with respect to this delivery to the Phillipa, Mr. Berman, he said that you gave him the documents that went with the order to the pier. Did you do that? A. That is unlikely.

Q. Well, did you do it? Have you a recollection of giving him those documents?

A. I don't have a recollection of having given him those documents.

Mr. Sullivan: May I have those exhibits back, Mr. Pratt, for just a second? [3258]

Q. I will ask you to look at that document. Can you read it for me, because I cannot make it out very well, the cheese.

A. Well, I can read it.

Q. Will you do so?

A. "Two cases of California Loaf cheese, 56

(Testimony of Henry Eugene Berman.)

pounds. Two cases of Romano Dolce, 100 pounds, 20 pounds of grated cheese, 20 pounds."

Q. Mr. Nystrom testified with respect to this cheese that he received the cheese from you. Did you participate in giving him this cheese?

A. In nowise.

Q. Do you remember a delivery made by your department to the steamship Edmund G. Ross on or about May 5, 1944?

A. Only that the name is familiar.

Mr. Sullivan: Mr. Pratt, I will introduce this for identification if you want to look at that now.

Q. Mr. Berman, I will show you a document, a yellow bill on Nye & Nissen City Sales Billhead, bearing No. 46761, and the date May 5, 1944, addressed to United States of America, War Shipping Administration, Olympic Steamship Company, and purporting to be an invoice for certain commodities for the steamship Edmund Ross, and I will ask you if you recognize that document.

A. Yes. Most of that document is in my own handwriting.

Q. Most of that document is in your own handwriting, and in what respects is there any handwriting on there that is not yours?

A. The left-hand side of the document has a notation "5 29 43 Send 6 copies." That is not mine. The extensions [3259] are in my handwriting, and there is an apparent receipt of delivery by one F. M. Miller that is not in my handwriting.

(Testimony of Henry Eugene Berman)

Q. The rest of the handwriting is your handwriting? A. Correct.

Q. Was that document made in the usual and regular course of business of your department in Nye & Nissen's? A. Yes.

Q. In connection with the shipment of goods as stated therein to the steamship Edmund Ross?

A. Yes, sir.

Q. Is it a part of the permanent records of your company, or the company for which you work?

A. It is.

Mr. Sullivan: I offer this document in evidence and ask it be marked defendants' next exhibit in order.

The Court: Admitted and marked.

(The document was marked Defendants' Exhibit CQ in evidence.)

Mr. Sullivan: Q. I will show you at this time, Mr. Berman, U. S. Exhibit 161 in evidence, purporting to be a typewritten invoice in connection with the steamship Edmund G. Ross, and ask you if you can identify that document.

A. That looks like the original of the invoice that went along with the merchandise.

Q. In other words, the document which you have just identified here, namely, Defendants' Exhibit in evidence CQ, and this document, U. S. Exhibit 161 in evidence, were prepared for the delivery to the Ross? A. That is correct.

Q. Is this U. S. Exhibit 161 in evidence the

(Testimony of Henry Eugene Berman.)

typewritten invoice you have been talking about all along here?

A. These are the [3260] typewritten invoices.

Q. Mr. Nystrom testified with respect to this delivery that you were present when the delivery was being loaded. Do you have any recollection of that?

A. No, I have no recollection of that.

Q. Is it probable that you were?

A. I was probably in the vicinity of the loading platform.

Q. Now, he testified, Mr. Nystrom testified in this court that he received some Cheddar cheese on this document there, calling your attention to the document first, Mr. Berman, would you be good enough to read that for me, the cheese on the invoice there?

A. Three bundles of 5-pound processed American cheese, 90 pounds, 3 cases cheddar cheese 465 pounds. 1 bag of grated cheese 10 pounds.

Q. He testified that he received this cheese from you. I will ask what was your practice at that time, at the time of the filling of this order with respect to the filling of that order for Cheddar Twins?

A. It was substantially the same as I have repeated before on the other boats.

Q. On the other boats we have just been over?

A. Correct.

Q. With reference to the Cheddar cheese, was

(Testimony of Henry Eugene Berman.)

there a weight range at the time this order was filled?

A. The weight of Cheddar cheese is always variable.

Q. On Cheddar Twins, the weight range on that at that time was approximately how much?

A. Cheddar twins would vary from [3261] slightly under 50 pounds to 60 pounds.

Q. Cheddar Triplets, would you give us that weight range at the time? A. 75 to 85.

Q. When you say that there was a weight range on Cheddar Twins, will you explain to the ladies and gentlemen of the jury what you mean when you say, when you use that term, "Weight range"?

A. Each individual cheese has a weight of its own not in relation to any other cheese in the particular package it might be packed with. It is made in a hoop and the only thing that is regulated by the hoop is the circular dimension. More or less cheese may be piled up in the hoop because the hoop has no top. That is where the variation comes in. The cheese may be higher or less high than the preceding or following cheese and therefore would not weigh the same.

Q. I will ask you to look at this invoice again and particularly at the item of the Cheddar Twins. Can you tell me if you used, as in the Cheddar Trips, if you used an estimate of a common denominator for the twins?

A. It looks very much as though I did as the

(Testimony of Henry Eugene Berman.)

result comes out 165 pounds, which would be an average of 55 pounds for each.

Q. Having in mind what you mentioned with respect to Mr. Nystrom, when the invoice called for cheese as it did here——

A. I would tell whoever was making the cheese load, I mean making the cheese ready for loading on the truck, to go over and get three cases of Cheddar Twins that would average 55 [3262] pounds a case in this particular instance.

Q. After you had done that you assumed that the instruction would be carried out?

A. That is correct.

Q. Do you remember a delivery to the steamship William Coulter?

A. The name is again familiar.

Mr. Sullivan: Mr. Pratt, this is a so-called hand tag.

Q. I show you a Nye & Nissen City Sales billhead bearing No. 16794, dated May 8, 1944, addressed to United States of America, War Shipping Administration, Hammond Shipping Company, and purportedly being an invoice of certain merchandise for the William A. Coulter, and ask you if you can identify that invoice.

A. Yes; yes, that is in my handwriting.

Q. Is all of that document in your handwriting?

A. With the same exception, the signature on receipt of delivery and the extension.

Q. Is that the same type of document or a document similar to those which you have talked

(Testimony of Henry Eugene Berman.)

about to these ladies and gentlemen of the jury that you prepared on the date of delivery?

A. They are, all exactly alike.

Q. Was the document then followed up with a typewritten invoice? A. Yes, it was.

Q. Was this document part of the regular records of your company? A. Yes, it was.

Q. And was it prepared by you in the usual and regular course of business? A. It was.

Q. In connection with the bill which I have described to the William Coulter? A. Yes.

Mr. Sullivan: I offer this document in evidence and ask that it be marked Defendants' Exhibit next in order.

(The document was marked Defendants' Exhibit CR in evidence.)

Mr. Sullivan: Q. I show you at this time, Mr. Berman, U. S. Exhibit No. 169 in evidence, purporting to be an invoice, typewritten invoice of a shipment dated May 8, 1944, and ask if you identify that document.

A. It looks like the original that would have accompanied the merchandise to its destination.

Q. Would this be the typewritten invoice that we have been talking about that was prepared upstairs in the office? A. It would be.

Q. Mr. Berman, without going into excessive detail of this transaction with reference to your instructions to the driver, I will ask the question, was your practice that you have described with reference to the loading of eggs on the steamship

(Testimony of Henry Eugene Berman.)

Coulter the same as you have described in other previous instances?

A. Our practice was always the same at that time.

Q. Was your practice with respect to the procuring of cheese the same as you have described heretofore? A. That is correct.

Q. Do you recall a shipment to the Francis Parker steamship? [3264]

A. I remember the name.

Mr. Sullivan: All right. Mr. Pratt, this is an instance where we have a photostat, because it is a sensitive count, the same as I told you before. Mr. Pratt, I have showed you here in place of the document, it is a photostat of the document in the same way that I have on previous occasions.

Mr. Pratt: I made no question.

Mr. Sullivan: Will it be stipulated that both in this instance and the preceding instances and the instances hereafter where I shall call them to your attention that this photostat may be introduced if the foundation is properly laid with the same full force and effect as those documents would have?

Mr. Pratt: I do not specify as to future ones. I have no objection to this one.

Mr. Sullivan: With respect to every document photostated up to this time the stipulation is accepted, is that right?

Mr. Pratt: I have made no objection to its introduction. That should suffice.

(Testimony of Henry Eugene Berman.)

Mr. Sullivan: Do you stipulate it can be used in this case with the same full force and effect as if it were the original?

Mr. Pratt: It is in evidence.

Mr. Sullivan: Q. Mr. Berman, I will show you a photostate of a document, and when in my questioning of you I hereafter [3265] use the word "document" I shall mean a photostat of a document of Nye & Nissen's billhead—may I see it—bearing the number 16901, dated May 9, 1944, addressed to United States of America, War Shipping Administration, Alaska Packers Association, and purports to be the handwritten invoice for the steamship Francis Parker, and I will ask you if you can identify that document.

A. Yes; with the exception of the extensions and the receipt of delivery signature it is in my handwriting.

Q. Is that document the type of document that is prepared at the time of delivery——

A. The same.

Q. Was it prepared in the usual and regular course of business? A. Yes, it was.

Q. By you? A. Yes.

Q. Is it a part of the permanent records of your company? A. That is correct.

Mr. Sullivan: I offer this document in evidence and ask that it be marked Defendants' Exhibit in evidence next in order.

(The document was marked Defendants' Exhibit CS in evidence.)

(Testimony of Henry Eugene Berman.)

Mr. Sullivan: Q. Then after that document which has been admitted as Defendants' Exhibit CS in evidence was prepared by you, was a typewritten invoice sent out with that load?

A. They always were.

Q. I will show you U. S. Exhibit No. 102 in evidence, purporting [3266] to be the typewritten invoice to the Francis Parker and ask you if you can identify that.

A. That was the same type of typewritten invoice we have talked about all along.

Q. That was prepared upstairs in the office, was it? A. That is correct.

Q. I notice the Government has two other exhibits here, Mr. Berman. I will show you U. S. Exhibit 103 in evidence and ask you what that it.

A. That looks like a duplicate copy of the original.

Q. Will you look at U. S. Exhibit 104 in evidence and tell me what that it?

A. That is the type of invoice I talked about here this morning, prepared for the use of the Customs officials.

Q. So that in addition to this exhibit CS in evidence, and in addition to the typewritten invoice on this particular transaction, this blue invoice was also sent out, is that correct?

A. Yes, it was.

Q. Is this blue invoice which I am directing your attention to and which is U. S. Exhibit 104 in evidence, is this invoice illustrative of the third

(Testimony of Henry Eugene Berman.)

type of invoice that we have been mentioning, or you have been mentioning, where rationed goods were involved? A. That is it, exactly.

Q. Was your practice at the time with respect to giving the instructions for the filling of the order on the Francis Parker [3267] with respect to butter and cheese and eggs the same as you have told us heretofore with respect to these other ships?

A. I think I could possibly answer that better if I saw the invoice and saw clearly what was indicated thereon.

Q. All right. I will show you the handwritten invoice which is Defendants' CS in evidence, and I will ask you to have in mind the question which I asked of you just now.

A. Yes; it calls for Processed American cheese, and I would just indicate how many cases of Processed American cheese were to be taken. As far as the Monterey Jack, here, that was bought from an outside source and would compact in an old orange box, and we usually threw that on the scale and weighed them and used whatever weight it actually was.

Q. I don't know whether I asked you the question, but with respect to the Processed American cheese, I remember you telling the ladies and gentlemen of the jury about the five, I think six bundles in a box. You testified to that this morning?

A. That is correct.

Q. I want to ask you this question: Was there

(Testimony of Henry Eugene Berman.)

in your experience with this commodity a weight range to that?

A. No, there was not. That was usually the weight of the bundles, 30 pounds per bundle net weight.

Q. There was a shipment from your establishment, or from your department, rather, to the Mission San Diego on May 10th, testified to here, Mr. Berman: Do you recall that? [3268]

A. Just the name.

Mr. Sullivan: This is a similar invoice, Mr. Pratt.

Mr. Pratt: What is this?

Mr. Sullivan: The Mission San Diego.

Q. Mr. Berman, I will show you a photostat of a document—when I use the word "document" here I will refer to the document and not the photostat—on a Nye & Nissen City Sales billhead, dated May 10, 1944, bearing No. 16930, and addressed to the United States of America, WSA, Deconhill Steamship Company. Do you remember this written invoice in connection with commodities for the steamship Mission San Diego?

A. Yes.

Q. Is that document in your handwriting?

A. Yes, it is.

Q. Was it prepared by you in connection with the delivery to the ship which you referred to there? A. Yes, it was.

Q. Was it prepared at the time of delivery, as you testified to in other instances?

(Testimony of Henry Eugene Berman.)

A. Yes, it was.

Q. And is it a permanent record of your company? A. Yes, it is.

Q. Was it prepared in the ordinary and usual course of business?

A. Yes, it was. May I indicate——

Q. Just a minute. Is there any writing on the document, Mr. Berman, which is not your handwriting?

A. Yes; the extensions and the receipt of delivery by the steward.

Q. Is there anything else on the document to which you wish to call attention?

A. Well, the only thing is, from the destination [3269] of the delivery and from the quantity of merchandise involved I would assume this to be a port feeding order.

Mr. Sullivan: I have shown this photostat to Mr. Pratt before questioning the witness, your Honor, and I understand Mr. Pratt has no objection to the introduction of this in evidence.

Mr. Pratt: None, whatever.

Mr. Sullivan: I offer this in evidence, your Honor, and ask it be marked defendants exhibit next in order.

(The document was marked Defendants' Exhibit "T" in evidence.)

Mr. Sullivan: Q. You mentioned something about a port feeding order, Mr. Berman. What is a port feeding order?

A. Port feeding order as differentiated from

(Testimony of Henry Eugene Berman.)

sea stores, is for the maintenance and subsistence of the crew while the boat is in port.

Q. You mentioned a little while ago that from the items on that invoice it was your recollection that that was a port feeding order?

A. That is correct.

Q. What did you see on the document that refreshes your recollection?

A. The delivery was made to the Anship Corporation dock in Oakland, which indicates the boat was in drydock, and under repair, and the quantity of merchandise is small. There are ten cases of eggs, one case of this kind of cheese, one case of that kind of cheese, and a few hundred pounds of butter. Those are not usually enough to have been sea stores. [3270]

Q. Mr. Berman, after this invoice was prepared in the manner you indicated, did you then cause to be prepared a typewritten invoice? A. Yes.

Q. I will show you United States Exhibit 153 in evidence and ask you to examine that and tell us if that is the type of written invoice for that shipment? A. That is.

Q. Now, Mr. Nystrom testified in this Court, Mr. Berman, that you were present when the delivery for the Mission San Diego was prepared. Do you have any recollection on that?

A. I have no recollection. Undoubtedly I was there.

Q. He testified in this courtroom, Mr. Berman,

(Testimony of Henry Eugene Berman.)

that he received on this occasion the Romano Dolce cheese which is on this invoice and the Cheddar Loaf Cheese from Mr. Goddard, and I will ask you this question: What was the practice at that time with respect to filling this particular order with Romano Dolce cheese, and the other one, Cheddar Loaf?

A. Cheddar Loaf. The practice was for the driver to go and get it himself.

Q. Was it the practice to receive it from Mr. Goddard at that time?

A. No, they knew where the cheese was.

Q. Will you look at this invoice and read for me here about a quantity of cheese that I have a note on, Mr. Berman? Does that invoice contain American Processed?

A. Yes, one case of 5-pound Processed American, 30 pounds.

Q. Is that the cheese that you mentioned a little while ago [3271] that always had the same weight?

A. Yes, it is.

Q. Now, he testified in court in substance that he received that cheese from you, and I will ask you this question: What was your practice with respect to filling an order like that for American Processed Cheese?

A. The American Processed Cheese was usually within fifteen or twenty feet from where he was loading his truck, and all he had to do was go over and pick it up and throw it in his truck.

(Testimony of Henry Eugene Berman.)

Q. And what was your practice with respect to giving instructions as to how that was to be done?

A. I would either give him the invoice and tell him to get the cheese that is called for on the invoice, or I would tell him to go over and get so many packages of such a type of cheese and come to such a weight.

Q. In other words, there was no necessity of instructing on adding up weights of cheese like American Processed, was there?

A. American Processed Cheese, we just told him how many cases or bundles to get.

Q. Did your department make a delivery to the Cape Cumberland on May 10, 1944?

A. Not that I can remember.

Mr. Sullivan: Mr. Clerk, will you mark this document for identification?

(The document was thereupon marked Defendants' Exhibit CU for Identification.)

Mr. Sullivan: Q. Mr. Berman, I will show you Defendants' [3272] CU for Identification, which purports to be a photostat of a document, and when I hereafter use the word "document" I will mean the photostat of a document on a Nye & Nissen billhead bearing a number D-2293 and dated May 10, 1944, addressed to USA, WSA, for Moore-McCormack Steamship Company, and purportedly being some type of invoice in connection with the steamship Cape Cumberland, and I will ask you if you recognize that?

(Testimony of Henry Eugene Berman.)

A. Yes, I recognize this invoice.

Q. Is that document in your handwriting?

A. No, this document bears no handwriting of mine whatsoever.

Q. Whose handwriting is it in, if you know?

A. This is Mr. Goddard's handwriting. I can recognize that part of it all right.

Q. Did you have anything to do with the delivery of May 10, 1944, to the Cape Cumberland?

A. No, I did not.

Q. Mr. Berman, Mr. Oscar Nystrom testified in this courtroom that he prepared the load, in substance, it is my recollection, evidenced by that document upon your instructions. Do you know whether that was prepared on your instructions?

A. That was not prepared under my instructions.

Q. He testified that at the time this load was prepared for delivery there was present you and a man named Paul Robinson. Do you know a man by the name of Paul Robinson?

A. Paul Robinson was then and is still in my employ.

Q. Who is Paul Robinson?

A. He is a retail delivery [3273] salesman.

Q. And he works under you, does he?

A. He does.

Q. And did he work under you on or about May 10, 1944? A. He did.

Q. Mr. Oscar Nystrom testified in this court room that with respect to this shipment to the Cape

(Testimony of Henry Eugene Berman.)

Cumberland that you and Mr. Paul Robinson scraped weights off the cheese which was on that shipment, and I will ask you the question whether you scraped weights off the cheese on that shipment, and I will let you look at the Defendants' Exhibit for Identification "C" again, so you can have your memory properly refreshed.

A. I had nothing to do with this shipment whatsoever.

Q. Did you scrape weights off that cheese?

A. Off this particular cheese?

Q. Yes. A. No, I did not.

Q. Did you have anything to do with this shipment?

A. Nothing whatsoever.

Q. Did you ever scrape weights off boxes of cheese? A. Lots of times.

Q. Under what circumstances would you scrape weights off boxes of cheese?

A. Triplett Cheddars at that time were coming in secondhand wooden boxes. There would be many superfluous marks and legends on the box and we would scrape everything off the box except the correct weight.

Q. Did anybody else around that plant scrape weights off [3274] cheese?

A. Everybody in the plant has at one time or another scraped weights off of cheese boxes.

Q. Mr. Nystrom testified that with respect to this load to the Cape Cumberland he received the eggs and the cheese from you, is that correct?

(Testimony of Henry Eugene Berman.)

A. That was impossible.

Q. Do you recall a shipment made by your department on May 12, 1944, to the steamship Heber M. Creel?

A. Only because it has been testified here.

Q. Mr. Berman, I will show you a yellow document, being a Nye & Nissen sales handwritten invoice bearing a number, 16942, and bearing a date, May 12, 1944, addressed to U.S.A. W.S.A. Olympic Steamship Company, and purportedly being some type of handwritten invoice in connection with a shipment to the steamship Heber Creel, and I will ask you if you can identify that document?

A. Yes, this is a document made out by myself.

Q. And is that in your handwriting or any part of it in your handwriting?

A. Everything except the extensions and apparently the receipt of delivery.

Q. In other words, is this type of document similar to the handwritten invoices you have been testifying to on these various ships, where they passed through your department?

A. This is it exactly.

Q. Was that document prepared at the time of delivery? A. Yes. [3275]

Q. In the usual and regular course of business?

A. Yes, it was.

Q. In connection with the shipment to that ship as designated therein? A. That is correct.

Q. Is it part of the permanent records of your company? A. It was.

(Testimony of Henry Eugene Berman.)

Mr. Sullivan: I will offer this document in evidence, if the Court please.

The Court: It may be admitted and marked.

(The document was thereupon received in evidence and marked Defendants' Exhibit CV.)

Mr. Sullivan: Q. After you prepared that document did you cause to be prepared or was there prepared a typewritten invoice?

A. In every instance.

Q. And so there would be a typewritten invoice to go out with this hand tag here?

A. That is correct.

Q. I will show you United States Exhibit 164 in evidence, purporting to be a typewritten invoice covering that shipment, and ask you if you can identify that?

A. This is no doubt the original that accompanied the merchandise.

Q. Mr. Berman, I will call your attention to Defendants' CV in evidence, and ask you to tell me what cheese is covered by that invoice there?

A. Six bundles of 5-pound Processed American, 180 pounds, one case of Romano Dolce, 65 pounds, one case of Cheddar Loaf cheese, 30 pounds, one bag of grated [3276] cheese, 10 pounds.

Q. What was your practice at this time with respect to filling the order as indicated on that document there?

A. The exact same way as I have explained before.

(Testimony of Henry Eugene Berman.)

Q. You mentioned here six bundles of 5-pound American cheese. Was that the same type of bundle that averaged up to thirty pounds a bundle?

A. Yes, six individual 5's, packed together in one compact unit.

Q. I should not have used the word "averaged," should I? A. That is right.

Q. Those weights of those individual units were constant? A. Yes.

Q. And the weight for the bundle, what was that? A. Thirty pounds.

Q. And in an instance like this what would be your practice, for instance, with Mr. Nystrom?

A. Mr. Nystrom would be instructed to go and get six bundles of 5-pound processed American cheese and put it on his load to go along with the rest of the merchandise indicated.

Q. And how about the one case of Romano Dolce's? How did that cheese come?

A. That cheese came back at one time or another either in secondhand eggs cases or secondhand orange boxes. If they were packed in the egg cases there would be more individual cheese per case than if they were packed in the orange cases, which are much smaller. [3277]

Q. I notice there is one case of Cheddar Loaf here, 30 pounds, is that correct?

A. It is correct if it says so there.

Q. Is that how it comes, in 30 pounds?

A. There is a variance in the weights of Ched-

(Testimony of Henry Eugene Berman.)

dar. It may come anywhere from twenty-four to thirty-two, possibly even thirty-three pounds.

Q. On the Cheddar Loaf?

A. On the Cheddar Loaf, as well as Singles and Triplets.

Q. In other words, the constant weight is on the American Processed, is that it? A. Only.

Q. Was it your recollection that you followed the practice with respect to giving Mr. Nystrom, instructions on filling this invoice that you have heretofore testified to the Jury?

A. It is not my recollection that I did not.

Q. Mr. Nystrom testified in this courtroom with respect to this delivery, Mr. Berman, that the cheese in this case was in the ice box and you took him into the ice box and you pointed out the cheese, and in some manner he noticed that the invoice called for six cases of American Processed cheese, and you said something—and I am only giving his testimony in substance—you said something about, "Well, we will put five in, and we will put in a loaf, one case of Cheddar Loaf, and that will give the right amount of packages." Did that occur?

A. No, that did not happen.

Q. He said furthermore that he noticed that when he was [3278] preparing this load and talking to you that he noticed that the invoice called for 65 pounds of Romano Dolce cheese, and that the case of cheese that you directed his attention to had on it specifically the words "Net weight 56 pounds," and you said something to him, "Oh, well,

(Testimony of Henry Eugene Berman.)

let it go and see what happens." Did that happen? Did that conversation happen?

A. First of all, the cases——

Mr. Pratt: I object to the answer. I would like to hear the answer.

Mr. Sullivan: You mean you object because you do not hear him, or because he does not answer as you wish?

The Court: Read the question, Mr. Reporter.

(Question read.)

The Court: Answer.

The Witness: A. No, it did not.

Mr. Sullivan: Q. Do you recall having anything to do with the physical loading of cheese in connection with the order for the Heber Creel?

A. I am sure I did not.

Q. Do you have any recollection of ever having tried to or attempted to put in a different type of cheese to fill the order in connection with this boat, or a different package of cheese?

A. I am sure I did not.

Q. Now, Mr. Berman, to save time, I have not gone into the detail of the eggs that we mentioned on the various invoices which you identified in court here, and I will ask you this [3279] general question with respect to the eggs on those shipments: Were the eggs on those shipments, so far as you know, all stamped eggs, that is, stamped by the Department of Agriculture?

A. Yes, they were.

(Testimony of Henry Eugene Berman.)

Q. Did you on any of these transactions that we have been discussing here involving any ships where your department had anything to do with it, did you permit unstamped cases to go out and go down to the waterfront to fill an order of these particular ships?

A. I wouldn't permit it to happen.

Q. Were there on all occasions when these deliveries were being filled, being the deliveries reflected by the various handwritten invoices you have identified here—were there at that time, and at all times that you have mentioned, sufficient quantities of stamped eggs on the floor of the Nye & Nissen plant stamped by the United States Department of Agriculture and stamped to fill those orders?

A. There would be more than a sufficiency.

Q. Did you on any occasion have to send unstamped cases down to the waterfront?

A. Yes, we did.

Q. And on what occasion would you do that?

A. Very often we would get a port order. Port orders at that time were all small. They would come in over the phone. They would, ninety-nine times out of a hundred, ask for immediate delivery to any point from Point Richmond to Redwood City for a boat that might have just come in from a long journey and had no butter [3280] and eggs on it at all, and the request would be, "Get two cases of eggs," or four cases of eggs, or any cases of eggs, down to a boat and get them down in a hurry. And on those occasions if at the moment there

(Testimony of Henry Eugene Berman.)

would not—it would be in between an inspection by the Department of Agriculture and a shipment, and there would not be enough eggs on the floor, which was very rare, that had been stamped by the Department of Agriculture, we would inform the shipping company, "Well, I have got some eggs but they haven't been inspected."

He would say, "That is all right, send them down anyway. They have got to have eggs, and they have got to have them in a hurry."

Even the Department of Agriculture—on occasions we have phoned them and told them we had a port order of eight or ten case of eggs, and they were asking for immediate delivery, and we would ask for an immediate inspection. And their response would be, "We have got so much work that we can't bother with a trivial eight or ten cases of eggs. Send them down. We will try to get them down at the waterfront."

Q. With the exception of a port order, did you ever knowingly permit, or did you ever instruct a delivery of unstamped eggs to fill what you have called a seagoing order?

A. Definitely not.

Q. During any of the time that you were in charge of City Sales, is that correct?

A. During any of the time? [3281]

Q. Yes. A. No, I won't say that.

Q. During the time that we have been talking about, beginning with the steamship John Muir

(Testimony of Henry Eugene Berman.)

here, and concluding with the various ships mentioned?

A. Definitely for that time and for a long time previous.

Q. Did your department make a shipment to the steamship James Oliver?

A. I remember the name.

Q. I will show you a yellow document, being a customer's invoice, Nye & Nissen, City Division, bearing a red stamp No. 16048, bearing a date May 23, 1944, addressed to USA, WSA, Alaska Transportation Company, and purportedly being some type of invoice for commodities delivered to the steamship James Oliver, and I will ask you if you can identify that?

A. Yes, although this is apparently the original copy.

Q. That is the original, is it?

A. Apparently the wrong copy was brought back in this instance, as happened on many occasions.

Q. Is this in your handwriting?

A. Yes, with the exception of the extension and the signature designating it had been delivered.

Q. Was that prepared in the usual and regular course of business? A. Yes, it was.

Q. Was it prepared by you?

A. Yes, it was.

Q. In connection with the shipment to the James Oliver? [3282]

A. That is right.

(Testimony of Henry Eugene Berman.)

Q. Is it part of the permanent records of your company? A. It was.

Mr. Sullivan: I offer this in evidence, your Honor. Did I understand your Honor to order that it can be admitted and marked?

The Court: It may be admitted and marked.

(The document was thereupon received in evidence and marked Defendants' Exhibit CW.)

Mr. Sullivan: Q. Mr. Berman, do you remember from looking at that how many cases that called for?

A. Yes; I do; 8 cases of eggs with two boxes of butter to the Moore Drydock in Oakland.

Q. Does that invoice refresh your recollection to enable you to tell the Jury as to what type of order that would be?

A. That is very definitely a port feeding order.

Q. And why do you say that?

A. Because the boat was in drydock and the quantity of merchandise.

Q. And would that be illustrative of an example where you might be required to send those eggs down without inspection stamps?

A. There is no doubt about it.

Q. I will show you this document, Defendants' CW in evidence, again, and direct your attention to a stamp "Inspected by W.F.A.," which appears on that. In the first place, do you know what that stamp means?

(Testimony of Henry Eugene Berman.)

A. It means inspected by the [3283] War Food Administration.

Q. Who placed that stamp on there, if you know? A. I did.

Q. I will show you, for instance, Defendants' CS, which covers the invoice to the Francis Parker, and ask you if you see a similar stamp on that?

A. The exact same stamp.

Q. And that is on the Francis Parker, inspected by W.F.A.? A. That is right.

Q. Where was that stamp that made the impression? Who kept it?

A. Right out in the open on the desk where the boys did their work.

Q. Under what circumstances was it placed on that invoice?

A. It was placed on the invoice when the invoice was first made.

Q. In other words, what I want to inquire is, would there be an effort on your part to obtain the WFA inspection?

A. Oh, very definitely.

Q. You mentioned a little while ago here about your effort to obtain a WFA inspection, and how they would tell you that they were flooded with business, is that correct?

A. That is correct.

Q. Do you recall specifically what happened to the WFA inspection on this particular invoice?

A. Oh no, I don't remember it on this particular

(Testimony of Henry Eugene Berman.)

invoice. You asked if it was illustrative. That it is.

Q. In other words, this writing "Inspected by WFA," put on [3284] this invoice, was that put on there by you to indicate that it had been inspected by WFA?

A. No, it was put on there to indicate that a WFA inspection was required.

Q. In other words, Mr. Berman, you wrote these invoices up at a particular time, did you not?

A. That is right.

Q. And that was when with respect to the delivery?

A. Just prior to the delivery.

Q. When with respect to the delivery would you endeavor to secure an inspection by the War Food Administration?

A. We would draw from the stockpile that we had on our floor at the time.

Mr. Sullivan: If your Honor please, may I have permission of your Honor—I guess it will be after the recess—to pass these various Defendants' Exhibits, which are the handwritten invoices, among the Jury?

The Court: You may pass them to the Jury now if you wish.

Mr. Sullivan: I will distribute these, your Honor, if I may.

(The handwritten invoices referred to were thereupon passed among the jurors.)

(Testimony of Henry Eugene Bergan.)

Mr. Sullivan: May I indicate to the Jury, your Honor, that the documents which I have given to the Jury are the various handwritten invoices identified to by Mr. Bergan, which he has identified with respect to these various ships, the [3285] deliveries of which were handled through his department?

The Court: The jurors may take a recess for a few minutes.

(Recess.) [3285-a]

The Court: You may proceed.

Mr. Sullivan: Q. Mr. Bergan, was a Department of Agriculture inspection or a War Food Administration inspection always required on a shipment to the War Shipping Administration or to the waterfront from your plant during the time you were at the Missouri Street premises?

A. Not to the waterfront, but for the War Shipping Administration.

Q. Not to the waterfront, but for the War Shipping Administration? A. Yes.

Q. Was there a time at which that requirement was made for War Shipping Administration inspection, War Food Administration inspection?

A. The War Food Administration was the Department of Agriculture.

Q. The War Food Administration was the Department of Agriculture. I understand that. The War Food Administration and the Department of Agriculture were for practical purposes one and

(Testimony of Henry Eugene Berman.)

the same thing? A. That is correct.

Q. Were all orders to the waterfront at the time that we have been discussing here, during the months of April and May, on those orders were War Food Administration or Department of Agriculture inspection required?

A. If they were War Shipping boats, yes.

Q. Prior to that time at any time was War Shipping Administration or War Food Administration inspection required?

A. Previous to what time? [3286]

Q. At any time previous to the time that you have been talking about with respect to these 11 ships?

A. Yes; there was a definite time when prior to that there was no required inspection.

Q. In other words, to make this clear, was there a time when the War Shipping Administration insisted on inspection? A. Yes.

Q. And before that they did not insist on inspection? A. That is correct.

Q. Are you able to place that time?

A. Yes. It was early in February of 1944.

Q. Before February of 1944 was it a requirement in all instances where you sent goods to the waterfront to have a Department of Agriculture inspection for instance on eggs?

A. No, it was not.

Q. Did you on any occasion before February of 1944 have War Food Administration or Department of Agriculture inspection?

(Testimony of Henry Eugene Berman.)

A. I did not.

Q. Was there Department of Agriculture Inspection on shipments from City Sales on any distances that you recall before February of 1944?

A. I believe not.

Q. After February of 1944 is it your statement, was it mandatory to have the Department of Agriculture inspection?

A. Yes. The War Shipping Administration issued a directive to that effect.

Q. After February, 1944, when you were filling in your department [3287] these orders, these seagoing orders, as you have called them, did you always fill the orders with Department of Agriculture stamped eggs? A. Yes, I did.

Q. Is it your recollection that the requirement in February of 1944 making it mandatory to have the inspection you have described, is it your recollection that that was a requirement of the War Shipping Administration?

A. From February, 1944, on, yes.

Mr. Sullivan: If your Honor please, at this time we would like to ask the Government to produce a regulation, produce that regulation as to each of these various ships, the ships and the various sales that the Government has produced evidence on if there was a requirement by regulation or by directive that there be a Department of Agriculture or a War Food Administration inspection.

Mr. Faulkner: If you have it.

Mr. Pratt: I do not understand why the Gov-

(Testimony of Henry Eugene Berman.)

ernment should be asked to furnish these regulations and directives.

Mr. Faulkner: I will explain why, your Honor. In other words, the defendants unfortunately find themselves to be in a position where they get very little cooperation from the Government agencies and when we have asked Mr. Pratt for these regulations he has given them to us. We will be able to produce them but if you have them it would be a courtesy to us and it would be informative to the jury. [3288]

Mr. Pratt: I want it thoroughly understood that everything the Government has counsel are welcome to. The Government will cooperate to any extent in submitting whatever we have in the way of regulations or directives or anything else.

The Court: Have you these regulations?

Mr. Pratt: I don't know. If we have them we will furnish them.

The Court: Very well. Proceed.

Mr. Pratt: There is an exhibit in evidence which is Exhibit 52, and which is an order while it is in evidence I believe that also it is such an order as the court will take judicial notice of.

Mr. Sullivan: Exhibit 52 is what?

Mr. Pratt: A regulation.

Mr. Faulkner: Mr. Pratt, it is all cleared up. We asked you for it before and got it. Here it is. I knew we couldn't get it, and we now have it.

Mr. Sullivan: At this time the defendants will offer in evidence Defendants' Exhibit K for Identification.

(Testimony of Henry Eugene Berman.)

Mr. Pratt: What is the number of the exhibit?

Mr. Sullivan: K.

Mr. Faulkner: K for Identification.

The Court: Admitted and marked.

(Defendants Exhibit K for Identification was thereupon admitted in evidence.) [3289]

Mr. Sullivan: May I have the permission of your Honor to read the document to the jury at this time?

The Court: For what purpose?

Mr. Sullivan: So that they can be acquainted with the background of the filling of War Shipping Administration orders for a period subsequent to the date of this letter.

The Court: No objection.

Mr. Faulkner: Well, it is an exhibit, your Honor.

Mr. Pratt: No objection.

The Court: Proceed.

Mr. Sullivan: (Reading)

"War Shipping Administration
220 Bush Street
San Francisco, California

January 15, 1944

Supplement 1 to SFOD 102

"To: All Agents and General Agents.

From: George Eggers—District Marine Superintendent

(Testimony of Henry Eugene Berman.)

Subject: Subsistence Stores

To further clarify Circular SF-OD-102, Supplement 3, dated December 22nd, our Washington office has requested us to circularize the following current inspection conditions.

1. All fresh or frozen meat products, poultry, turkeys, eggs, cheese and butter delivered to War Shipping Administration and United Nations' vessels on the [3290] West Coast must bear the inspection stamp of either the Food Distribution Administration or the Veterinary Corps of the United States Army.

2. The War Shipping Administration has requested that the Food Distribution Administration provide inspection service adequate for this purpose.

3. To avoid duplication of effort, and to insure a steady flow of satisfactory subsistence stores to all types of vessels, Food Distribution Administration inspection is satisfactory unless United States Army inspection is requested.

Yours very truly,

GEORGE EGGERS

District Marine Superintendent.

Q. After you were aware of the necessity of an inspection stamp on commodities going to fill War Shipping Administration orders, Mr. Berman, did

(Testimony of Henry Eugene Berman.)

you keep any record of your orders that were handled through your department to various ships along the waterfront? A. I did.

Q. What record did you keep?

A. I have a stenographic note book and on a certain day at the beginning of February, 1944, whenever City Sales made a delivery to a War Shipping boat I entered the date, the name of the company, the amount of merchandise involved that was inspected, the order number, and the name of the boat in that book.

Mr. Sullivan: Mr. Clerk, will you mark that book which I hand you as Defendants' Exhibit for Identification next in [3291] order.

(The book was marked Defendants' Exhibit CX for Identification.)

Mr. Sullivan: Q. I will show you Defendants' Exhibit CX for Identification, Mr. Berman, and I will ask you to look at it first and examine it.

A. I have.

Q. Is that the book to which you just had reference in your testimony? A. That is it.

Q. Who kept that book?

A. Well, in the strict sense of the word it was not kept. It was—you mean who recorded the entries in there?

Q. Yes. A. I recorded all these entries.

Q. What entries did you record?

A. As I explained before, the name of the shipping company, the date, the amount and type of

(Testimony of Henry Eugene Berman.)

merchandise inspected and the name of the boat.

Q. Was that book which you have there a record kept in connection with the sending of inspected commodities to the waterfront on war shipping orders? A. Yes, solely for that purpose.

Q. When you made the records that you have just testified here, was that a record of inspected commodities? A. Yes, it was.

Q. Will you just tell us what you did in connection with the records in that book, what you did when you were filling an order of, for instance, eggs when War Food Administration Inspection was required?

A. Mr. Sullivan, do you mean in respect to the order, or with respect to the books, what I did?

Q. I will withdraw that question and ask you this question: When you filled an order for the War Shipping Administration did you always fill it, beginning with the month of February, 1944, did you always fill it with eggs which had been inspected? A. Yes.

Q. When you did that did you make any record of that order any place?

A. Yes, I made it in this book.

Q. You made it in the book. When you made that record in the book had the eggs already been inspected?

A. Yes, these eggs had already been inspected.

Q. By whom?

A. By the Department of Agriculture.

Q. When those eggs were inspected by the De-

(Testimony of Henry Eugene Bertman.)

partment of Agriculture they were inspected where?

A. At our premises at Seventeenth and Missouri Street.

Q. After you filled the order and made the entry in that book did you do anything with reference to complying with the request of the purchasing agent and the War Food Distribution inspection—I will withdraw that question. I will ask this question: When those purchase orders came in requiring a Department of Agriculture inspection or a War Food Administration inspection, who would go about getting that inspection for the purpose of the purchase order?

A. Well, for the purpose of the purchase order, the eggs would be available, having been already inspected.

Q. So what would you do?

A. I would take those eggs on these [3293] deliveries and record them in the book.

Q. Did any member of the inspection service of the War Food Administration or Department of Agriculture do anything with respect to that book?

A. Yes, they did.

Q. What did they do?

A. They would initial this book upon each occasion when they took the information from this book at our premises.

Q. In other words, did they come into the premises from time to time?

A. They were in our premises daily during this time.

(Testimony of Henry Eugene Berman.)

Q. When they came into your premises daily what did they do about consulting that record there?

A. Oh, this book was kept on the open desk in my office.

Q. What did they do with respect to the book when they came in on those occasions?

A. They would open the book and see what deliveries had been made since the last time they had made a notation. They would take all that information down in a book of their own and they would then initial the information in my book that they had copied into their book, so as to know next time where they had left off.

Q. What was the purpose of their doing that?

A. Their purpose in doing that was so that they, in turn, could issue an inspection certificate to the general agent that showed here in the book who received the merchandise.

Q. So we can get this clearly, Mr. Berman, the agent or general agent that you mentioned who sent in this purchase order, would he require an inspection for the purchase order? [3294]

A. Yes, he would require an inspection.

Q. At the time you filled that order were your eggs already inspected?

A. Yes, our eggs were inspected and stamped.

Q. At a subsequent time did a member of the Department of Agriculture send, if you know, a certificate of quality in connection with those eggs on that purchase order?

(Testimony of Henry Eugene Berman.)

A. The only way I know that is because I have seen this here.

Q. In other words, the inspectors came into the plant? A. Yes.

Q. Did they take certain information from your book? A. Yes sir.

Q. When he prepared another certificate, if he did, did you ever receive a copy of those certificates? A. No.

Q. That would be a transaction between the Department of Agriculture and the shipping company? A. Yes.

Q. In every instance did you record the name of the ship and the date when you filled an order for the War Shipping Administration and complied with their requirement that you have an inspection?

A. In every instance it was my intention to and if none is there I may have forgotten, but I don't know.

Q. But as far as you know, did you attempt to put down every instance on which you used a lot of stamped eggs to place the order?

A. That I did.

Q. What was the purpose of having the inspector sign on the book?

A. For two reasons. One would be for their information, to know where they had left off, the last boat that they had copied down, and the other was for my [3295] information to know that they had made a note of the orders going out that would